

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 11, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Mary Voelker  
Walter Tarmann

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
David Richards, BA03:108, petitioner  
Gary Knueppel, BA03:108, neighbor  
Robert and Rebecca Wisniewski, BA03:111, owners  
Chris Miracle, La Rosa Landscape Co.,BA03:111,  
landscape contractor and petitioner  
Jennifer J. Meier, BA03:114, petitioner  
Jim and Jean Lucas, BA03:114, neighbors  
Kathy Voight, BA03:114, neighbor  
Gail Huber, BA03:114, neighbor  
Terri Franklin, BA04:001, petitioner  
William Kessler, BA03:115, petitioner  
Dan Geib, BA03:115, neighbor  
E. Pramenko, BA03:115, neighbor  
Chris and Cathy Graham, BA04:002, petitioners  
Verona Janichek, BA 04:002, owner  
Mike and Shirley Janichek, BA04:002

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of January 14, 2004, with the following changes on page 5.*

*Mr. Schultz's motion in the case of BA03:112 Chris Petherick / Susanne Shunta (Rich Hennecke), which reads as follows:*

*I make a motion to adopt the staff's recommendation, with the condition stated in the Staff Report and for the following reasons*

*stated by Walter Tarmann. Mr. Tarmann's reasons are as follows: "Approval of the requested Variance allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. Further, the petitioner is not proposing any external expansions to the residence and will, in fact, improve the external appearance by replacing all existing windows. Accordingly, the request will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and welfare, therefore, is in conformance with the purpose and intent of the Ordinance."*

*shall be changed to read as follows:*

*I make a motion to adopt the staff's recommendation, with the condition stated in the Staff Report and for the following reasons: Approval of the requested Variance allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. Further, the petitioner is not proposing any external expansions to the residence and will, in fact, improve the external appearance by replacing all existing windows. Accordingly, the request will not adversely affect the surrounding property owners or the lake and would not be contrary to the public interest and welfare. Therefore, the request, as approved, is in conformance with the purpose and intent of the Ordinance.*

The motion was seconded by Ms. Voelker and carried with four yes votes. Mr. Bartholomew abstained because he was not present at the meeting of January 14, 2004.

## **NEW BUSINESS:**

### **BA03:108 ARTHUR RICHARDS FARMS, INC. (c/o DAVID RICHARDS)** **(held in abeyance from January 4, 2004)**

Ms. Voelker

*I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried with four yes votes. Mr. Bartholomew voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

Granting the requested lot size variance would have the effect of rezoning, contrary to Section 19.03 (4) of the Waukesha County Zoning Code, which provides that the Board of Adjustment cannot issue a decision that has the effect of rezoning. In addition, it has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in

the absence of a variance, no reasonable use can be made of the property. The denial of a lot size variance would not prevent a reasonable use of the property because the petitioner has the option of constructing a residence on that portion of the property located on the east side of S.T.H. "83", as long as that parcel remains a part of the larger parcel on the west side of S.T.H. "83". He also has the option of dividing the property in such a way as to create a smaller parcel on the west side of S.T.H. "83" that would be tied to the parcel on the east side of S.T.H. "83", as long as the combined area of those parcels is in conformance with the minimum lot size requirement of 3 acres. Therefore, the approval of the requested lot size variance would not be in conformance with the purpose and intent of the Ordinance.

**BA03:111 ROBERT WISNIEWSKI**

Mr. Tarmann

*I move to approve the request in accordance with the conditions and reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The stone entry monument may remain in its present location and does not need to be relocated any farther from the road.
2. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the stone entry monument is located partially within the 66 ft. wide established road right-of-way of Interlaken Dr. and if, in the future, any portion of the stone entry monument should interfere with necessary road improvements, that portion of the stone entry monument must be removed or relocated at the owner's expense. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.
3. Prior to the issuance of a zoning permit, the Summit Town Board must approve the location of the stone entry monument partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Since the residence is setback a significant distance from the road and is barely visible from the road, it is necessary to have some type of address marker near the road. Although the stone monument is larger than would be required to identify the property, it is aesthetically appealing and in keeping with other entry monuments in the area. An entry monument located in conformance with the road setback requirement would be difficult to see from the road and would most likely require the removal of at least one tree. Further, the stone entry monument is behind a chain link fence and it is located farther from the road than the driveway pillars on both of the adjacent lots. It is far enough from the road so that it is not a safety hazard and it does not interfere with the traveling public's use of the road. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

**BA03:114 JENNIFER J. MEIER**

Ms. Voelker

*I make a motion to adopt the staff's recommendation, with the conditions and reasons, as stated in the Staff Report.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The Planning and Zoning Division staff has no preference between Plan "A" or Plan "B", but they must be advised as to which proposal will be used, prior to the issuance of a zoning permit.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. The proposed addition and/or deck shall be no closer to the west lot line than the existing residence and they must be located in conformance with the shore and floodplain setback requirements, utilizing the shore and floodplain setback averaging provision of the Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property, in the form of a remodeled and slightly expanded residence. The remodeled residence will be in keeping with other homes in the neighborhood and the slight expansion will be in conformance with all locational requirements of the Ordinance, except for offset from the west lot line. The residence is a substantial structure, which has been permitted to be expanded in the past and is non-conforming only because it does not meet the offset requirement from the west lot line. The proposed addition and/or deck would be no closer to the west lot line than the existing residence, requiring only a special exception, rather than a variance, from the offset requirement. Special exceptions, unlike variances, do not require the demonstration of an unnecessary hardship. The proposed addition and/or deck will not adversely affect the lake or the adjacent property owners and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA04:001 THOMAS & TERRI FRANKLIN**

Mr. Schultz

*I make a motion to approve the request, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with no conditions. The reasons for the recommendation, as stated in the Staff Report, are as follows:

The building is a substantial structure that has been permitted to be extensively remodeled in the past. The approval of this request will provide a reasonable use of the property and permit the

building to be fully converted to a single-family residence. The proposed remodeling will provide a more efficient floor plan, but it will not change the size or footprint of the building and it will not increase the degree of non-conformity. The proposed remodeling will not adversely affect the nearby property owners or the lake and is not contrary to the public interest. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

**BA04:002 CHRIS GRAHAM**

Mr. Tarmann

*I move to approve the request in accordance with the reasons and conditions set forth in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The remodeling must not expand the size of the structure.
2. Prior to the issuance of a Zoning Permit for the remodeling, all precedent conditions of the pending Conditional Use Permit (SCU-1359) and Site Plan/Plan of Operation Permit (PO-03-MRTT-3) must be complied with and the Conditional Use and Site Plan/Plan of Operation Permits must be issued.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will provide a reasonable use of the property and permit the building to be used more efficiently. Although the building has an extremely non-conforming road setback, it is an historic structure that is an integral part of the community and deserving of preservation. The proposed remodeling will not change the size or footprint of the building and will not increase the degree of non-conformity. The building has existed in its present location for many years and does not pose a safety hazard. The proposed remodeling is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:115 WILLIAM KESSLER**

*Note: Mr. Schultz left the meeting prior to the Board's deliberation on this case because he is the architect for Mr. Kessler's proposed residence.*

Mr. Bartholomew

*I make a motion to deny the request for a floor area ratio variance, but to approve variances for floodplain setback and for a lateral expansion in the C-1 (EFD) Existing Floodplain Development District, in accordance with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried with four yes votes.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the new residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. All existing structures must be removed from the property, no later than six months after the issuance of a zoning permit for a new residence.
3. The total floor area on the property, including the first and second floors of the new residence, any covered or enclosed porches, and the attached garage, must not exceed 3,061 sq. ft. The floor area of the new residence, not including the attached garage or any covered or enclosed porches, must be at least 1,300 sq. ft. This will result in a residence in conformance with the minimum required house size and in conformance with the maximum permitted floor area ratio of 15%.
4. The first floor of the new residence must conform with the minimum first floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and the Town of Merton Zoning Ordinance. This will require a first floor area of at least 900 sq. ft. The total building footprint, including the first floor of the new residence, any covered or enclosed porches on the first floor, and the attached garage, must not exceed 1,800 sq. ft.
5. The new residence and attached garage must be located in conformance with the offset and road setback requirements. This will require the residence and attached garage to be at least 12.2 ft. from the side lot lines and at least 50 ft. from the edge of the 50 ft. wide platted road right-of-way of North Woods Dr. These dimensions are measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and the road, as the overhangs exceed two (2) ft. in width.
6. Any decks or patios must also be located in conformance with the offset and road setback requirements. This will require any decks or patios to be at least 7.3 ft. from the side lot lines and at least 50 ft. from the edge of the 50 ft. wide platted road right-of-way of North Woods Dr.
7. In order to minimize the impact on the 100-year floodplain, the new residence and attached garage, must have a shore setback of at least 130 ft., as measured to the outer edge of the wall, provided the overhang on the lake side of the residence does not exceed two (2) ft. in width. If the overhang on the lake side of the residence exceeds two (2) ft. in width, the building must be located the additional distance from the lake as the overhang exceeds two (2) ft. in width. Any decks or patios must also have a shore setback of at least 130 ft.
8. The first floor elevation of the new residence and the floor of the attached garage must be at or above 901.9 ft. above mean sea level (two feet above the 100-year flood elevation).
9. The new residence may not have a full basement. If it is constructed on a crawl space, the floor of the crawl space must be at or above 899.9 ft. above mean sea level (the 100-year flood elevation).
10. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction.

11. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
12. The area around the residence shall be filled to an elevation of at least 900.9 ft. above mean sea level, with the fill extending at that elevation for at least 15 ft. beyond the structure, wherever possible. Where that is not possible, due to lot line constraints, the fill shall extend at that elevation as far as possible, without resulting in slope conditions that would adversely affect surface water drainage onto the adjacent properties.
13. Prior to the issuance of a zoning permit, a stake-out survey showing the location and elevation of the proposed residence and attached garage, as well as any proposed decks or patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
14. In order to ensure the construction of a new residence, attached garage, and deck does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 13.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It would not be in conformance with the purpose and intent of the Ordinance to permit the construction of a new residence and attached garage exceeding the maximum permitted floor area ratio of 15% and it has not been demonstrated, as required for a variance, that denial of a floor area ratio variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. While the owner may desire a larger home, conformance with the maximum permitted floor area ratio would permit a reasonable use of the property because it would allow the construction of a new residence and attached garage with a combined floor area of 3,061 sq. ft.

Due to the location of the 100-year floodplain, a residence in conformance with the floodplain setback requirement could not be located on the property. Therefore, a hardship exists with respect to the requested floodplain setback variance and the requested variance to permit a lateral expansion into the floodplain in the C-1 (EFD), Existing Floodplain Development District. The approval of variances from the floodplain setback requirement and to permit a lateral expansion into the floodplain in the C-1 (EFD), Existing Floodplain Development District, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance and will permit a reasonable use of the property in the form of a new residence and attached garage, elevated above the 100-year floodplain, with a conforming offset, and with a similar footprint to

the existing structures. This is not contrary to the public interest and will result in only a slight lateral expansion into the 100-year floodplain, which will minimize the impact of the new residence on the floodplain and the lake, while still permitting a reasonable use of the property.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**ADJOURNMENT:**

Mr. Bartholomew                      *I make a motion to adjourn this meeting at 9:01 p.m.*

The motion was seconded by Ms. Voelker and carried with four yes votes. *Note: Mr. Schultz was not present at the time of adjournment because he left the meeting prior to the Board's deliberation on BA03:115, William Kessler.*

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment